

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Partitioning, Disaggregation, and Licensing of)	WT Docket No. 19-38
Spectrum)	
)	

COMMENTS OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications (Midco) supports the Commission taking action to allow for more robust partitioning, disaggregation, and licensing and leasing of spectrum, especially in rural areas.¹ Midco is submitting comments separate from our trade associations² to highlight a particular area of concern—limiting future partition and disaggregation rules to “carriers.”³

The term “carrier” implies that a company needs eligible telecommunications carrier (ETC) status or a Certificate of Authority to benefit from the new spectrum licensing and leasing rules. While Midco has ETC status in some of our markets, we do not (and cannot) receive ETC

¹ *Partitioning, Disaggregation and Leasing of Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 19-38, FCC 19-22, ¶ 1(NPRM) (“As part of the Commission’s continuing efforts to close the digital divide and to increase spectrum access by small and rural carriers, the Commission adopts this *Notice of Proposed Rulemaking* exploring how potential changes to our partitioning, disaggregation, and leasing rules might better serve those goals. . . Among the provisions is a requirement that the Commission initiate a rulemaking to consider specific questions related to the partitioning or disaggregation of spectrum licenses and spectrum leasing as a potential means to increase availability of advanced telecommunications services in rural areas and spectrum access by small carriers.”).

² Midco is a long-time member of NCTA, the Internet & Television Association, and, after our acquisition of a fixed wireless provider in March of 2018, a member of WISPA, the Wireless Internet Service Providers Association. Midco understands that WISPA will be submitting comments on the detailed procedures that the Commission may consider adopting in this Docket.

³ NPRM ¶ 11.

status or a Certificate of Authority in our entire footprint. Consequently, we could be limited in benefitting from the new rules. Therefore, we encourage the Commission to clarify that eligible entities need not have ETC status or a Certificate of Authority to use the new rules. We also suggest other safeguards to ensure that rural providers are using the spectrum to advance the goals of the NPRM and the MOBILE NOW Act.

INTRODUCTION

Midco has operated for more than 85 years in the rural areas of the Upper Midwest, beginning with operating movie theaters and radio stations, and then owning the first television station in South Dakota. In April of 1996, in Aberdeen, South Dakota (with a population of about 25,000 at the time), we launched our first internet service.

We have since aggressively expanded our broadband wired service. We offer Gigabit to more than 90% of our wired network, and are beginning construction and upgrades to offer symmetrical, 10 Gigabit service as part of the 10G Initiative. We have almost 10,000 miles of fiber, the vast majority of which is in our upper Midwestern territory in North Dakota, South Dakota, and rural Minnesota.⁴ Currently, we serve almost 400,000 customers, and have more than 1,600 employees in our five state territory.⁵

Although we serve rural areas with our wired network, we wanted to do more to serve the most remote areas of our footprint. Therefore, in March of 2018, Midco acquired a fixed wireless provider with more than 10 years' experience providing broadband in the Red River

⁴ While our fiber network passes through the Twin Cities in Minnesota, we do not provide any services in the Twin Cities. Instead, we focus our operations in rural Minnesota.

⁵ In addition to operations in South Dakota, North Dakota, and rural Minnesota, Midco also has limited operations in western Wisconsin, and the Lawrence area in Kansas.

Valley in northern North Dakota and Minnesota. Since that acquisition, Midco has made a large public commitment to further closing the Digital Divide using fixed wireless technology with our award of about \$38.9 Million in Connect America Fund Phase II (CAF) funds.

Continuing access to spectrum is key for our fixed wireless operations and those of other operators that primarily serve rural America. By modernizing the licensing and leasing rules and broadening the eligible entities to use the new rules, the Commission could further close the Digital Divide.

DISCUSSION

As summarized by the Commission, the MOBILE NOW Act requires “that the Commission initiate a rulemaking to consider specific questions related to the partitioning or disaggregation of spectrum licenses and spectrum leasing as a potential means to increase availability of *advanced telecommunications services in rural areas* and spectrum access by small carriers.”⁶ Disaggregation and partition of licenses and leasing is an important step in closing the Digital Divide,⁷ but only if companies committed to serving rural America are able to benefit from the new rules.

Midco is concerned about the term “carrier,” specifically in the “unaffiliated carrier to serve a rural area” in Section 616 of the MOBILE NOW Act.⁸ “Carrier” implies that only companies that are covered common carriers pursuant to the Communications Act of 1934 would

⁶ NPRM ¶ 1 (emphasis added).

⁷ NPRM ¶ 1 (“As part of the Commission’s continuing efforts to close the digital divide and to increase spectrum access by small and rural carriers, the Commission adopts this *Notice of Proposed Rulemaking* exploring how potential changes to our partitioning, disaggregation, and leasing rules might better serve those goals.”).

⁸ MOBILE NOW § 616(b)(1)(A)-(B); NPRM ¶ 11 (setting out the mandate from the MOBILE NOW Act to the Commission).

be able to benefit from the partition and disaggregation rules. As we previously noted, we are concerned that “carrier” could limit the new rules only to covered carriers having ETC status or a Certificate of Authority.⁹

As the Commission knows, ETC status is complex, especially for CLECs like Midco. Our ETC status varies state-by-state and market by market, depending on whether the market has a rural local exchange carrier or is a competitive market. The attached Exhibit 1 summarizes our ETC status for Minnesota, South Dakota, and North Dakota. In South Dakota, for example, we currently offer phone in 53 markets, but we only have ETC status in 40 of those markets.¹⁰

The situation becomes even more complex for our CAF areas. In South Dakota, for example, we were granted an Amended Certificate of Authority and ETC “to provide local exchange service in certain [i.e., CAF] census blocks in South Dakota[.]”¹¹ Figure 1 provides a visual depiction of this authority—we can and will offer voice and reimbursable Lifeline to

⁹ See generally Letter from Nicole Tupman, Assistant General Counsel, Midcontinent Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket 19-38, at 1 (March 7, 2019); see also NPRM ¶ 20 & n.39 (citing the same); *Id.* ¶ 13 & n.34 (“Section 616 directs the Commission to use the definition of “carrier” contained in section 3 of the Communications Act of 1934, which defines a carrier as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy . . . but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.”).

¹⁰ See Exhibit 1 at 1. Exhibit 1 does not include our CAF ETC areas, or our ETC areas for Kansas or Wisconsin. Depending on the states, our ETC or Certificate of Authority status, or lack thereof, may prevent us from applying for reimbursable Lifeline.

¹¹ See Exhibit 2, SD Public Utilities Commission, *Order Granting Amended Certificate of Authority*, TC18-058, at 1-2.

customers in the tan, CAF blocks, but cannot offer voice or reimbursable Lifeline to customers in the white, non-CAF blocks, even though our fixed wireless signal will extend beyond the CAF blocks.

While we can determine our ability to offer voice and reimbursable Lifeline in our ETC authorized areas, using ETC status to determine our ability to take advantage of new partition and

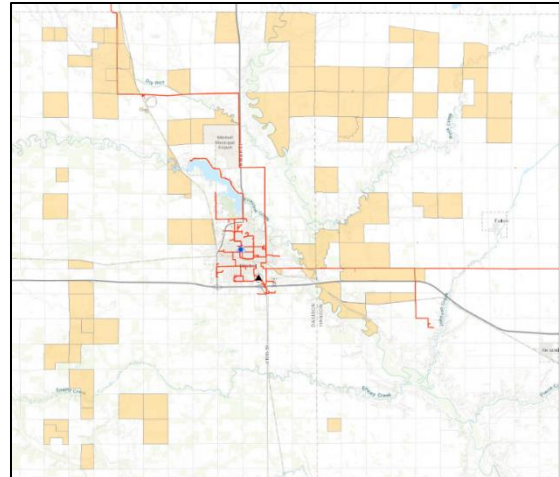


Figure 1: CAF Blocks (in Tan) Awarded to Midco in Rural Mitchell, SD for which Midco has ETC Status

disaggregation rules for spectrum is impossible. Would we, for example, only be able to use the rules in areas where we have ETC status or a Certificate of Authority? What if the spectrum license area included some markets where we do not have ETC status or a Certificate of Authority, but some areas where we do have such authority? We are not alone in this dilemma—tying “carrier” to ETC status or a Certificate of Authority would likely affect WISPs and rural broadband providers that may not have any (or only limited) “carrier” status.

We encourage the Commission to clarify these questions by more broadly defining “carrier” to include a services provider that is an incumbent or competitive local exchange carrier, a cable television system operator, or a terrestrial fixed wireless provider (including wireless ISPs, or WISPs) that provides service to end user premises.¹² Alternatively, the Commission could allow a provider to benefit from the new rules for any spectrum license or lease in a state in which the provider has ETC status or a Certificate of Authority in at least one market in the state.

¹² As these entities must file a Form 477, there is precedent for the Commission to expand the definition of “carrier” to include such entities.

To encourage advanced telecommunications in rural America and prevent spectrum warehousing by large, national carriers, the Commission could institute other requirements for a provider to take advantage of the new rules. The Commission has already provided some safeguards, such as the definition of “rural area,”¹³ which Midco supports. The Commission could also require that a provider has been active in the area in which the license or lease will be acquired, such as requiring that the provider seeking the spectrum has filed a Form 477 for the census blocks within or adjacent to the spectrum license or lease to be partitioned, disaggregated, or acquired. To ensure that the carrier is providing “advanced telecommunications,” the Commission could also require that the provider is, or with the spectrum will be, providing services at a certain speed and latency threshold, such as a minimum speed of 25/3 Mbps.

CONCLUSION

Midco urges the Commission to more broadly define “carrier” and allow rural providers to take advantage of the proposed spectrum leasing and licensing rule changes. Specifically, the Commission should expand “carrier” to include providers that do not have ETC or Certificate of Authority, especially for rural areas, with appropriate safeguards.

June 3, 2019

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

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¹³ NPRM ¶ 13 & n.36 (“And ‘rural area’ is any area other than ‘(A) a city, town, or incorporated area that has a population of more than 20,000 inhabitants; or (B) an urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants.’”).

Exhibit 1
Midcontinent Phone Exchanges
Minnesota

Market	Rate Center
Alden	ALDEN
Annandale	ANNANDALE
Avon, Avon Township	AVON
Baldwin Twp (Princeton)	PRINCETON
Becker	BECKER
Bemidji	BEMIDJI
Bemidji	BEMIDJI
Bethel/East Bethel	TWINCITIES
Big Stone Township	BIGSTONECY
Bluehill Township	ZIMMERMAN
Bradford	TWINCITIES
Braham	BRAHAM
Breckenridge	BRECKENRDG
Cambridge	CAMBRIDGE
Canby	CANBY
Cass Lake	CASS LAKE
Castle Tower	TWINCITIES
Center City	LINDSTROM
Chisago City	LINDSTROM
Claremont	CLAREMONT
Clarks Grove	CLARKS GROVE
Clear Lake	CLEAR LAKE
Clear Lake Township	CLEAR LAKE
Clearwater	CLEARWATER
Coates (Hastings)	HASTINGS
Cold Spring	COLDSPRING
Columbus Township	TWINCITIES
Corinna Twp (portion of where Annandale)	ANNANDALE
Crookston	CROOKSTON
Dilworth (see Moorhead)	MOORHEAD
East Grand Forks	EGRNDFORKS
Eckles Twp	
Elgin - (Plainview/Elgin)	ELGIN
Elgin Township	ELGIN
Ellendale	ELLENDALE
Ely	ELY
Elysian	ELYSIAN
Fairmont	FAIRMONT
Foley	FOLEY
Forest Lake	TWINCITIES
Foreston	FORESTON
Geneva (Clarks Grove)	CLARKS GROVE
Ghent	MINNEOTA
Glenville	GLENVILLE
Hampton (Hastings)	HASTINGS
Harris	NORTH BRCH
Haven Township	ST CLOUD
Holdingford	HOLDINGFD
International Falls	INTETNLFLS
Isanti	TWINCITIES
Kellogg	KELLOGG
Le Center	LE CENTER
Lent	TWINCITIES

Lindstrom	LINDSTROM
Lindwood	TWINCITIES
Livonia Township	ZIMMERMAN
Marshan Township	
May Township	STILLWATER
Medford / Waseca	
Milaca, Milaca Township	MILACA
Minnetoa	MINNEOTA
Moorhead	MOORHEAD
Mora	MORA
New Richland	NEW RICHLAND
Nininger Township	
North Branch	NORTH BRCH
Northern Township	
Oakport	
Ogilvie	OGILVIE
Ortonville	ORTONVILLE
Ortonville Township	ORTONVILLE
Oslo	OSLO
Palmer	CLEAR LAKE
Pierz	PIERZ
Pine City, Pine City Twp, Woischke's MH Pk	PINE CITY
Plainview - (Plainview / Elgin)	PLAINVIEW
Pokegama	PINE CITY
Porter	CANBY
Princeton, Baldwin Township	PRINCETON
Puposky	PUPOSKY
Randolph, Randolph Township	
Ranier	RANIER
Ravenna Township	
Reeds Landing (Wabasha)	WABASHA
Richmond	RICHMOND
Rockville (St Cloud)	ST CLOUD
Royalton	ROYALTON
Rush City, Nessel Township	RUSH CITY
Sabin	SABIN
Sand Prairie/ Greenfield Township	
Scandia, Marine on the St Croix	SCANDIMRIN
Shafer	LINDSTROM
Shafer	LINDSTROM
Sherburn	SHERBURN
St Augusta	ST CLOUD
St Francis/St Francis Trailer Park	TWINCITIES
St Joseph, St Joseph Township	ST JOSEPH
St Stephen	ST CLOUD
St Wendel	ST JOSEPH
St. Cloud	ST CLOUD
Stacy	TWINCITIES
Standford Township	ZIMMERMAN
Stanford Township	
Stanton	
Taunton	MINNEOTA
Taylors Falls	TAYLORSFLS
Turtle Lake Township	
Turtle River	TURTLE RIV
Vermillion, Vermillion Township	HASTINGS
Wabasha, Greenfield Township, Pepin Township	WABASHA
Waite Park	

Wanamingo	WANAMINGO
Waterville	
Wilton (see Bemidji)	
Winton (see Ely)	
Wyoming	TWINCITIES
Wyoming (Twin Cities)	
Wyoming Township	TWINCITIES
Zimmerman, Zimmerman Terrace	ZIMMERMAN

<u>Key</u>
ETC Status
Non-ETC Status

Exhibit 1

Midcontinent Phone Exchanges

South Dakota

Market	Rate Center
Aberdeen	ABERDEEN
Baltic	BALTIC
Bath (Aberdeen)	ABERDEEN
Belle Fourche	BELLEFORCH
Big Stone City	BIGSTONECY
Black Hawk (Rapid City)	BLHKSDCERS1
Bowdle	BOWDLE
Box Elder (Rapid City)	RAPID CITY
Canton	CANTON
Central City (Spearfish)	SPEARFISH
Crooks	CROOKS
Deadwood (Spearfish)	SPEARFISH
Ellsworth AFB	RAPID CITY
Fort Pierre	PIERRE
Gayville (Wakonda)	WAKONDA
Harrisburg/Tea	HARISBGTEA
Hill City	
Huron	HURON
Lead (Spearfish)	SPEARFISH
Lennox	LENNOX
Madison	MADISON
McIntosh	
Meckling (Vermillion)	VERMILLION
Milbank	MILBANK
Miller	MILLER
Mina (Aberdeen)	ABERDEEN
Mitchell	MITCHELL
Piedmont (Rapid City)	RAPID CITY
Pierre	PIERRE
Prairiewood (Aberdeen)	ABERDEEN
Rapid City	RAPID CITY
Rapid Valley	
Redfield	REDFIELD
Renner	SIOUX FLS
Roscoe	ROSCOE
Roslyn	ROSLYN
Selby / Java	SELBY
Sioux Falls	SIOUX FLS
Spearfish	SPEARFISH
Spearfish (Deadwood)	SPEARFISH
Spearfish (Whitewood)	SPEARFISH
St. Lawrence (Miller)	MILLER
Sturgis	STURGIS
Summerset (Rapid City)	RAPID CITY
Tea	HARISBGTEA
Timber Lake	
Vermillion	VERMILLION
Warner (Aberdeen)	ABERDEEN
Watertown	WATERTOWN
Waubay	WAUBAY
Webster	WEBSTER
West Ortonville	ORTONVILLE
Wolsey	WOLSEY
Yankton	YANKTON

Key
ETC Status
Non-ETC Status

Exhibit 1

Midcontinent Phone Exchanges

North Dakota

Market	Rate Center
Belfield	BELFIELD
Bisbee	BISBEE
Bismarck	BISMARCK
Bottineau	BOTTINEAU
Bowman	BOWMAN
Buxton (see Reynolds)	
Cando	CANDO
Carrington	CARRINGTON
Casselton	CASSELTON
Cooperstown	COOPERSTOWN
Courtenay	
Devils Lake	DEVILSLAKE
Dickinson	DICKINSON
Dodge	DODGE
Drake	DRAKE
Dunseith	DUNSEITH
Emerado	EMERADO
Fairmount	FAIRMOUNT
Fargo	FARGO
Frontier (Fargo)	FARGO
Gladstone (Dickinson)	DICKINSON
Grafton	GRAFTON
Grand Forks	GRANDFORKS
Grand Forks AFB	GRANDFORKS
Grandin (Gardner)	GARDNER
Halliday	HALLIDAY
Hankinson	HANKINSON
Harvey	HARVEY
Harwood (Fargo)	FARGO
Hatton	HATTON
Hettinger	HETTINGER
Hillsboro	HILLSBORO
Killdeer	KILLDEER
Langdon	LANGDON
Larimore	LARIMORE
Leonard	LEONARD
Lidgerwood	LIDGERWOOD
Manvel	MANVEL
Mayville	MAYVILLE
Minto	MINTO
New Rockford	NEW ROCKFD
Oxbow (Hickson)	HICKSON
Reeder	REEDER
Reynolds	REYNOLDS
Rhame	RHAME
Richardton	RICHARDTON
Rolla	ROLLA
Rollette	ROLETTE
Rugby	RUGBY
Scranton	SCRANTON
South Heart	BELFIELD
Starkweather	STARKWETHR
Thompson	THOMPSON
Wahpeton	WAHPETON
Walhalla	WALHALLA

West Fargo	
Williston	WILLISTON
Willow City	WILLOWCITY

<u>Key</u>
ETC Status
Non-ETC Status

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION OF)
MIDCONTINENT COMMUNICATIONS FOR AN)
AMENDED CERTIFICATE OF AUTHORITY TO)
PROVIDE LOCAL EXCHANGE SERVICE IN)
DEFINED CENSUS BLOCKS WITHIN RURAL)
AREAS IN MOODY, DAVISON, MINNEHAHA,)
HANSON, BEADLE, KINGSBURY AND)
CODINGTON COUNTIES AND FOR A WAIVER)
OF ARSD 20:10:32:15)**

**ORDER GRANTING
AMENDED CERTIFICATE
OF AUTHORITY**

TC18-058

On October 22, 2018, the South Dakota Public Utilities Commission (Commission) received a petition from Midcontinent Communications (Midco) for an amended certificate of authority to provide local exchange service in certain census blocks in South Dakota as well as requesting a waiver of ARSD 20:10:32:15. Midco has been awarded Connect America Fund II (CAF II) funding from the Federal Communications Commission and is required to obtain eligible telecommunications carrier status in all of the census blocks in which Midco was awarded CAF II funding (CAF II Census Blocks).

On October 25, 2018, Commission electronically transmitted notice of the filing and the intervention deadline November 9, 2018, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On November 9, 2018, the South Dakota Telecommunications Association (SDTA) filed a Petition to Intervene and Venture Communications Cooperative (Venture), Santel Communications Cooperative (Santel), and Interstate Telecommunications Cooperative, Inc. (ITC) filed a Joint Petition to Intervene (collectively, "Intervenors"). On November 29, 2018, intervention was granted to the Intervenors. On January 4, 2019, a Joint Stipulation for Settlement and a settlement agreement between the Intervenors and Midco was filed with the Commission.

On January 18, 2019, at its regularly scheduled meeting, the Commission considered the request for an Amended Certificate of Authority. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and 49-31-69 and ARSD 20:10:32:03. The Commission voted unanimously to approve Midco's request for an Amended Certificate of Authority in order to provide local exchange service in certain census blocks in South Dakota and to grant Midco's request for ETC designation pursuant to the Intervenor's and Midco's Joint Stipulation for Settlement. As the Commission's final decision in this matter, it is therefore

ORDERED, that Midco's request for an Amended Certificate of Authority is hereby granted except as to any overlap areas that may extend into the rural telephone company study areas of Santel, Venture, or ITC. It is further

ORDERED, that Midco's request for ETC designation is granted except as to any overlap areas that may extend into the rural telephone company study areas of Santel, Venture, or ITC.

Dated at Pierre, South Dakota, this 23rd day of January 2019.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By:

Karen E. Cremer

Date:

01/23/19

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner